

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

**BRIEF AND APPENDIX FOR FANNIE DOLEZILEK,
PETITIONER**

IN THE
UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

*United States Court of Appeals
For the
District of Columbia Circuit*

No. 11,766

FILED JUL 3 1953

FANNIE DOLEZILEK,
Petitioner,

Joseph W. Stewart
CLERK

v. **909**

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Petition to Review the Order of the Tax Court of the
United States

EDMUND L. BROWNING, JR.
Attorney for Petitioner
3145 N Street, N.W.
Washington 7, D. C.

No. 11,766

STATEMENT OF QUESTIONS PRESENTED

The question is whether the Tax Court of the United States should dismiss a case for lack of jurisdiction when the deficiency notice was mailed to the petitioner more than 90 days prior to the filing of the notice of appeal to said Tax Court, and when said petitioner was a ward Indian of the United States Government and did not receive the 90 day letter so mailed, and the said 90 day letter was returned to the Commissioner of Internal Revenue and stamped with a date when received by the Collector of Internal Revenue's office at Helena, Montana, and thereafter personally served on the petitioner, and appeal was taken within 90 days of the time the letter was served on said petitioner.

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IN THE
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No. 11,766

FANNIE DOLEZILEK,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

**Petition to Review the Order of the Tax Court of the
United States**

BRIEF OF PETITIONER

STATEMENT REGARDING JURISDICTION

The Tax Court of the United States had jurisdiction of this case under the provisions of 53 Stat. 82 as amended Oct. 21, 1942, C. 619, Title V. #504 (a), (c), 56 Stat. 957 Dec. 29, 1945, C. 652, Title II, #203 (a), 59 Stat. 673, U.S.C.A. Title 26, #272, because the case involves a deficiency assessment of income tax.

The petition, (Appellant's App. 2), in the Tax Court asks for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency dated March 11, 1952, and alleges that petitioner did not file income tax returns for the years 1946, 1947, 1948, 1949, and 1950. That the notice of deficiency was mailed to petitioner on or about April 21, 1952. The respondent to

this petition filed his motion to dismiss said petition for lack of jurisdiction, (Appellant's App. 7), because the notice of deficiency was mailed to petitioner on March 11, 1952, and the petition was not filed until June 16, 1952, more than 90 days after the mailing of the notice of deficiency.

The petitioner made a motion to quash the respondent's motion, (Appellant's App. 8), and in said motion to quash set out facts which showed the deficiency notice dated March 11, 1952 was mailed to petitioner by registered mail, but was not received by the petitioner, and that thereafter the Collector of Internal Revenue at Helena, Montana, had said notice of deficiency in his possession and placed a stamp showing said notice was in the office of the Collector of Internal Revenue at Helena, Montana on April 21, 1952, and that later said notice of deficiency was personally handed to petitioner (Appellant's App. 8, 9, 10).

That on January 6, 1953, the Judge of the Tax Court made an order denying the petitioner's motion to quash, (Appellant's App. 21), and granting the respondent's motion to dismiss, (Appellant's App. 22).

This Court has jurisdiction of this case under the provisions of Section 1254 of Title 28 of the United States Code as amended May 24, 1949, C 139, #128, 63 Stat. 107, U.S.C.A. Title 26, #1141(a); 53 Stat. 164, amended Oct. 21, 1942, C. 619, Title V, #504 (a), (c), 56 Stat. 957; June 25, 1948, C. 646, #26, 62 Stat. 991, U.S.C.A., Title 26, #1141 (b)(1), and 53 Stat. 165, amended Oct. 21, 1942, C. 619, Title V. #504 (a), (c), 56 Stat. 957, U.S.C.A., Title 26, #1142. The jurisdiction of this Court to hear said appeal is exclusive because of the fact petitioner did not file an income tax return in any of the years involved.

STATEMENT OF CASE

This case is an action in which the taxpayer is seeking to have a redetermination of the Commissioner's notice of deficiency. The parties are the petitioner who is a member

of the Sioux Indian Tribe, a ward of the United States Government, and an enrolled Indian allottee upon the rolls of the Fort Peck Indian Reservation at Poplar, Montana, and the Commissioner of Internal Revenue.

The petitioner did not file income tax returns for the calendar years 1946, 1947, 1948, 1949, and 1950, (Appellant's App. 2, 3). The Commissioner made out a deficiency notice covering those years and by his deficiency notice claimed the total sum of \$15,721.52 deficiency, 25% deficiency penalty of \$3,930.39, and penalty under Section 294 (d) of the Internal Revenue Code of \$691.83, (Appellant's App. 12). The petitioner in her petition before the Tax Court alleged that the gross income for said years was incorrect, and set out the correct gross income, (Appellant's App. 4). The petitioner alleged that the Commissioner did not take from the gross income the expenses incurred each year and set out the amount of these expenses, (Appellant's App. 4). The petitioner further alleged that all the income set up by the Commissioner was income from crops grown on restricted trust lands of the petitioner, (Appellant's App. 5).

The notice of deficiency here involved was dated March 11, 1952 (Appellant's App. 10). The notice of deficiency was mailed to the petitioner, addressed to her at Poplar, Montana. The petitioner never received the notice so mailed, (Appellant's App. 9). That thereafter said notice of deficiency was in the office of the Collector of Internal Revenue at Helena, Montana, and a stamp was placed on said notice showing the same was received by the Collector on April 21, 1952, (Appellant's App. 11, 12, 14, 15, 16, 17). That thereafter the notice of deficiency was personally handed to petitioner, (Appellant's App. 19).

That on June 16, 1952 the petitioner filed her petition in the Tax Court for a redetermination of the deficiency, (Appellant's App. 1). That thereafter the Commissioner moved the Tax Court to dismiss the petition for the reason that the notice of deficiency was mailed to the petitioner

more than 90 days prior to the filing of the petition, and thereafter the Tax Court did not have jurisdiction to decide the case under Section 272 of the Internal Revenue Code, (Appellant's App. 7).

That the petitioner moved to quash the Commissioner's motion to dismiss, (Appellant's App. 8), on the grounds that the notice of deficiency was served in less than 90 days on her personally before the filing of the petition, (Appellant's App. 8), and on the further ground that the petitioner was a ward of the United States Government and could only be served with process by serving the guardian (Appellant's App. 8). That the petitioner attached to her motion to quash affidavits showing the statements in the said motion to quash were true, (Appellant's App. 9, 18, 19, 20).

That the Tax Court made an order denying the petitioner's motion to quash, and granting the Commissioner's motion to dismiss these proceedings for lack of jurisdiction, (Appellant's App. 21).

STATUTES INVOLVED

53 Stat. 82, as amended Oct. 21, 1942, c. 619, Title V, #504, (a), (c), 56 Stat. 957, Dec. 29, 1945, c. 652 Title II, #203 (a), 59 Stat. 673, U.S.C.A., Title 26 #272, (a) (1).

“(a) (1) Petition to the Tax Court of the United States.) If in the case of any taxpayer, the Commissioner determines that there is a deficiency in respect of the tax imposed by this chapter, the Commissioner is authorized to send notice of such deficiency to the taxpayer by registered mail. Within ninety days after such notice is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the ninetieth day) the taxpayer may file a petition with The Tax Court of the United States for a redetermination of the deficiency.”

53 Stat. 82, as amended Oct. 21, 1942, c. 619, Title I, #168
(a), 56 Stat. 876, U.S.C.A., Title 26, #272 (c)

“(c) Failure to file petition. If the taxpayer does not file a petition with the Board within the time prescribed in sub-section (a) of this section, the deficiency, notice of which has been mailed to the taxpayer, shall be assessed, and shall be paid upon notice and demand from the collector.”

“(k) Address for notice of deficiency. In the absence of notice to the Commissioner under section 312 (a) of the existence of a fiduciary relationship, notice of a deficiency in respect of a tax imposed by this chapter, if mailed to the taxpayer at his last known address, shall be sufficient for the purposes of this chapter even if such taxpayer is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence.”

Act of Feb. 10, 1939, c 2, Sec. 312, 53 Stat. 91, U.S.C.A.
Title 26, #312

“(a) Fiduciary of taxpayer. Upon notice to the Commissioner that any person is acting in a fiduciary capacity such fiduciary shall assume the powers, rights, duties, and privileges of the taxpayer in respect of a tax imposed by this chapter (except as otherwise specifically provided and except that the tax shall be collected from the estate of the taxpayer), until notice is given that the fiduciary capacity has terminated.”

“(b) Fiduciary of transferee. Upon notice to the Commissioner that any person is acting in a fiduciary capacity for a person subject to the liability specified in section 311, the fiduciary shall assume, on behalf of such person, the powers, rights, duties, and privileges of such person under such section, (except that the liability shall be collected from the estate of such person) until notice is given that the fiduciary capacity has terminated.

(c) Manner of Notice. Notice under subsection (a) or (b) shall be given in accordance with regulations prescribed by the Commissioner with the approval of the Secretary.”

STATEMENT OF POINTS

1. The Tax Court erred in denying the petitioner's motion to quash respondent's motion to dismiss the action in that the petitioner filed her petition within 90 days of the time the notice of deficiency was personally served on the petitioner.

2. The Tax Court erred in granting respondent's motion to dismiss the action because of lack of jurisdiction in that the petition was filed within 90 days of the time the notice of deficiency was personally served on the petitioner.

3. The Tax Court erred in denying the petitioner's motion to quash respondent's motion to dismiss this action in that the petitioner is a ward of the United States Government and service of the notice of deficiency should have been made on the appropriate government official.

4. The Tax Court erred in granting the respondent's motion to dismiss the action because of lack of jurisdiction in that the petitioner is a ward of the United States Government and service of the notice of deficiency should have been made on the appropriate government official.

SUMMARY OF ARGUMENT

The petitioner's argument will be confined to two points which briefly stated are as follows:

1. After receiving back the undelivered registered notice of deficiency which had been mailed to the petitioner, the Commissioner of Internal Revenue sent said notice to the Collector of Internal Revenue at Helena, Montana, and there the said Collector had each page of said notice stamped with the words: Received April 21, 1952; and said Collector thereafter had the petitioner served personally with said notice of deficiency. The Commissioner of Internal Revenue thereby lead the petitioner and her attorney to believe that said notice had not been mailed until after April 21,

1952, and that the Commissioner had by his conduct abandoned the service by registered mail.

2. That petitioner is a ward of the United States of America and her lands are held in trust to the United States of America; that since the relationship of guardian and ward exist between the Government and the petitioner, said guardian must be served with notice of deficiency even though neither the guardian nor the ward filed notice with the Commissioner of Internal Revenue as to the guardianship; the United States Government through the Secretary of Interior cannot say: "we are guardian of the petitioner and hold power and control over her lands as such guardian," and as Commissioner of Internal Revenue say: "we do not know of such guardianship and we therefore can disregard the same because we have not been informed by our other self, the Secretary of Interior, of such relationship."

ARGUMENT

I. The Taxpayer Never Received by Mail the Notice of Deficiency; the Collector of Internal Revenue Had a Stamp Showing the Date Said Notice Was in His Office Placed on Said Notice, and Thereafter When Said Notice Was Personally Served on the Taxpayer, Said Taxpayer Was Misled as to the Time in Which She Had to Appeal Said Notice. The 90 Days to Appeal Said Notice Should Run from the Date of Stamping by the Collector.

53 Stat. 82, as amended Oct. 21, 1942, C. 619, Title V, #504, (a), (c), 56 Stat. 957, Dec. 29, 1945, C. 652, Title II, #203 (a), 59 Stat. 673, U.S.C.A., Title 26, #272, (a) (1) authorizes the Commissioner of Internal Revenue to send the notice of deficiency to the taxpayer by registered mail. The notice of deficiency here involved was dated March 11, 1952 at Salt Lake City, Utah, (Appellant's App. 10), addressed to Mrs. Charles (Fannie) Dolezilek, Poplar, Mon-

tana, (Appellant's App. 10), and received at the postoffice in Poplar, Montana on March 13, 1952, (Appellant's App. 9). Petitioner never claimed the registered letter, and the letter was returned to Salt Lake City on April 12, 1952, (Appellant's App. 9). The petitioner did not see the deficiency notice at that time, (Appellant's App. 9). If the Commissioner of Internal Revenue had done nothing else, there is no doubt that good and valid service would have been made by the mailing of said deficiency, assuming that, for the argument in this section, the taxpayer was not a ward of the government. *McCord v. C.I.R.*, 74 App. D.C. 369, 123 F. 2d 164.

In our case, though, the notice was returned to Salt Lake City, and thereafter it came to the Collector of Internal Revenue's office at Helena, and there on each page of said notice was stamped: Received April 21, 1952, Coll. Int. Rev. Dist. Mont., and the figure: 81 (Appellant's App. 11, 12, 14, 15, 16, 17). Thereafter the notice was delivered personally to the petitioner. The petitioner and her attorney were misled by the date stamped on each page of the notice into believing that said date was the time at which said notice was sent out, and that under the statute they had 90 days at least from April 21, 1952 to file their petition in the Tax Court.

The only case we can find dealing with a leading astray of the taxpayer by dates placed on notice of deficiency is *Eppler v. Commisisoner of Internal Revenue*, (C A 7th 1951) 188 F. 2d 95. In that case on page 98 the Court said:

"Both parties admit that if in this case the second registered letter had not been mailed to the taxpayer the mailing of the first letter would have started the ninety day period of limitations within which the taxpayer might appeal to the Tax Court. *But the taxpayer insists, and we think with justification, that by mailing out the notice of deficiency the second time by registered mail the taxpayer was given no notice of the first mailing and that he was therefore misled into believing*

that he had ninety days from the second mailing within which to file his appeal. The Commissioner should not be permitted to defeat the purpose of this remedial statute by so misleading the taxpayer." (Emphasis ours)

The Eppler Case, *supra*, is of course different in that the second service was made by mail. We see no reason, though, why the petitioner should have her day in court taken away because of the fact that the Collector of Internal Revenue had misled the petitioner by placing a stamp showing when the notice was in his office on said notice.

II. Service of Notice of Deficiency on an Indian Ward of the United States Is Not Sufficient Service.

The evidence provided here concerning the status of the petitioner is the affidavits of James D. Crawford, superintendent of the Fort Peck Indian Agency (Appellant's App. 18), the petitioner (Appellant's App. 19), and Dolly Akers (Appellant's App. 20). From these affidavits it is shown that the petitioner is a full blood Sioux Indian, a ward of the United States Government, and an allottee Indian.

The petitioner in her petition to the Tax Court alleges that the income here acquired was acquired from restricted trust lands under the jurisdiction of the United States (Appellant's App. 5).

It is obvious from the facts in this case that the Commissioner of Internal Revenue is trying to collect taxes on income obtained from lands under the jurisdiction of the Department of Interior of the United States Government.

In 42 C.J.S., Indians, Sec. 20, page 672, speaking of the status of Indians as wards of the United States Government, the author says:

"Indian tribes are dependents on the government of the United States, and their members are wards of the government, and as such are entitled to the care and protection due from a guardian to his ward."

This rule is supported by the following cases:

Jaybird Mining Co. v. Weir, 271 U.S. 609, 46 Sup. Ct. 592

United States v. Noble, 237 U.S. 74, 35 Sup. Ct. 532

Choctaw and Chickasaw Nations v. Seitz, (C.A. Okl.) 193 F. 2d. 456, Cert. Den. 343 U.S. 919, 72 Sup. Ct. 307

State ex. rel. Irvine v. District Court of Fourth Judicial District, (Mont.) 239 P. 2d 272

Can the Commissioner of Internal Revenue, with the facts and law as set out above, collect taxes from the petitioner without serving the United States Government, or the Secretary of Interior? The answer appears obvious. The guardian must be served. This is so in spite of 53 Stat. 82, as amended Oct. 21, 1952, C. 619, Title I, Sec. 168 (a), 56 Stat. 876, U.S.C.A., Title 26, Sec. 272 (R) which states that in the absence of notice of the existence of the fiduciary relationship, the mailing of notice to the last known address of the taxpayer shall be sufficient. How can the government, speaking through the Commissioner of Internal Revenue, say on one hand that they did not know the petitioner is a ward, and yet on the other hand, through the Secretary of Interior, hold the wards lands in trust and act as her guardian?

The giving of notice to one hand of the government by the other hand of the government as provided by the Act of February 10, 1931, C. 2, Sec. 312, 53 Stat. 91, U.S.C.A., Title 26, Sec. 312 would be and is foolish. No organization, not even the government of the United States, should be able to say that you are a ward of the government in the eyes of one branch of the government, but that is unknown to the other part and therefore, acting in the capacity of Tax Collector, we can disregard the fiduciary relationship unless the other part of the government informs us of this relationship.

CONCLUSION

The Commissioner of Internal Revenue relies entirely upon the fact that the notice of deficiency was mailed by registered mail to the petitioner more than ninety days before the filing of her appeal in the Tax Court. The Commissioner entirely overlooks the facts that the petitioner is a ward of the United States Government, that service was not made on the Government of the United States, and that the Commissioner attempted to serve the petitioner by two methods. The taxpayer should have the right here to a hearing on the merits.

Respectfully submitted,

EDMUND L. BROWNING, JR.

Attorney for the Petitioner.

APPENDIX

DOCKET NO. 42075

FANNIE DOLEZILEK,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

APPEARANCES:

For Petitioner: John Marriott Kline, Esq.

For Respondent: R. Transue, Esq.

DOCKET ENTRIES

1952

June 16—Petition received and filed. Taxpayer notified.
Fee paid.

" 18—Copy of petition served on General Counsel.

Aug. 6—Motion to dismiss for lack of jurisdiction filed
by General Counsel.

" 12—Hearing set September 10, 1952 on Respondent's
motion.

Sept. 3—Order of Continuance to September 24, 1952 at
Washington, D. C. entered.

" 22—Motion to quash Respondent's motion to dismiss
filed by taxpayer.

" 23—Copy of Motion and Notice of Hearing served on
General Counsel.

" 24—Hearing had before Judge Kern on Respondent's
motion to dismiss and Petitioner's motion to
quash Respondent's motion. Order—C. A. V. Pe-
titioner's brief due 10/29/52. Respondent's reply
due 30 days after Petitioner's brief.

- Oct. 30—Brief filed by taxpayer. 10/31/52 copy served.
 Nov. 28—Motion for extension to December 30, 1952 to file
 brief filed by General Counsel. 12/2/52 Granted.
 Dec. 30—Reply brief filed by General Counsel.

1953

- Jan. 6—Order that Petitioner's motion of 9/22/52 is
 denied, further Order that Respondent's motion
 of 8/6/52 to dismiss for lack of jurisdiction is
 granted, entered.
 Mar. 5—Petition for review by U. S. Court of Appeals
 for the District of Columbia, filed by taxpayer.
 " 6—Proof of service of petition for review filed.
 " 18—Statement of Points filed by taxpayer, with proof
 of service thereon.
 " 18—Designation of Contents of Record filed by tax-
 payer.
 " 18—Proof of Service of Designation of Record filed.

Filed June 16, 1952

• * * * * *

PETITION

The above named petitioner hereby petitions for a re-
 termination of the deficiency set forth by the Commissioner
 of Internal Revenue in his notice of deficiency (90 D-LHJ)
 dated March 11, 1952, and as a basis of his proceeding
 alleges as follows:

1. The petitioner is an individual with her residence on a
 farm West of Poplar, Montana and her mailing address is
 Poplar, Montana. That the petitioner did not file income

tax returns for the years 1946, 1947, 1948, 1949, and 1950. That the Collector of Internal Revenue for the District of Montana had the matter investigated and a determination of the amount of tax due in each of the years. That the petitioner has not signed income tax returns for any of the above years.

2. The notice of deficiency (a copy of which is attached and marked Exhibit A) was mailed to the petitioner on or about April 21, 1952.

3. That liabilities as determined by the commissioner are in income taxes for the calendar years of 1946, 1947, 1948, 1949, and 1950 in the total sum of \$15,721.52 deficiency, 25% delinquency penalty of \$3,930.39, and penalty under Section 294 (d) of \$691.83 making a total of \$20,343.74, all of which amount is in dispute.

3 4. The determination of tax set forth in said notice of deficiency is based upon the following errors.

(a) The amount of gross income alleged to have been received by the petitioner for the years 1946, 1947, 1948, and 1950 are incorrect.

(b) The commissioner did not in determining the deductions, take off from the gross income in any of the years involved the deductible expenses incurred in obtaining said income.

(c) That the petitioner's income is totally exempt for the reason that it was all earned from crops grown on lands allotted to petitioner in the Fort Peck Reservation in the State of Montana, and your petitioner is a ward of the Government of the United States of America.

5. The facts upon which the petitioner relies as the basis of these proceedings are as follows:

(a) That the gross income for the years, 1946, 1947, 1948, and 1950 are incorrect as follows:

- (1) The petitioner's actual gross income for 1946 was \$4200.00 and the Commissioner set up her gross income at \$4939.48, leaving a difference of \$739.48.
 - (2) That petitioner's actual gross income for 1947 was \$6100.00 and the Commissioner set up her gross income at \$5344.81, leaving a difference of \$755.19.
 - (3) That petitioner's actual gross income for 1948 was \$17,483.85 and the Commissioner set up her gross income at \$18,286.70, leaving a difference of \$802.85.
- 4 (4) That petitioner's actual gross income for 1950 was \$9,340.29 and the Commissioner set up her gross income at \$16,183.24, leaving a difference of \$6,842.95.

(b) That the Commissioner did not take from the gross income each year any expenses; that the income and expenses should have been figured as follows:

(1)	1946
Gross Income	\$ 4200.00
Gas, Oil, Labor	545.00
Net Income	\$ 3655.00
(2)	1947
Gross Income	\$ 6100.00
Gas, Oil, Labor	858.00
Net Income	\$ 5242.00
(3)	1948
Gross Income	\$17483.85
Gas, Oil, Labor	1001.00
Net Income	\$16482.85

(4)	1949
Gross Income	\$17318.85
Gas, Oil, Labor	647.00
Net Income	\$16671.85
(5)	1950
Gross Income	\$ 9340.00
Gas, Oil, Labor	none
Net Income	\$ 9340.00

(c) That petitioner is a member of the Sioux Indian Tribe and an enrolled Indian allottee upon the rolls of the Fort Peck Indian Reservation at Poplar, Montana and as such a ward of the United States Government. That under the treaties entered into between the Indians of the Fort Peck Reservation and the United States Government, and by virtue of the general allotment act, all
5 allotted lands are to be conveyed by the President of the United States, or his representative, at the expiration of the trust period, to each allotted ward Indian in fee simple, free from all encumbrances. That the restricted trust period is now and has been at all times involved in this action in full force and effect. That the Commissioner of Internal Revenue therefore has no jurisdiction over this petitioner and her restricted property and could not levy warrants of distraint, tax liens, or in any other manner encumber the trust property of the petitioner under the treaties and laws of the United States. That all the income of the petitioner for the years involved in the petition was obtained from crops grown upon the following described property:

W $\frac{1}{2}$ of Section 13, Township 28
North, Range 49 E.M.M.

Which property is restricted trust lands of the petitioner under the jurisdiction of the Secretary of Interior of the United States of America.

6 Wherefore, the petitioner prays that this Court

make a redetermination of the deficiency set forth by the Commissioner of Internal Revenue and find that there is no liability on the part of the petitioner for income taxes for the years 1946, 1947, 1948, 1949, and 1950.

JOHN MARRIOTT KLINE
Attorney for Petitioner
103-5 1st National Bank Bldg.
Glasgow, Montana

STATE OF MONTANA

ss.

COUNTY OF ROOSEVELT

Fannie Dolezilek, being duly sworn, says that she is the petitioner above named; that she has read the foregoing petition, or had the same read to her, and is familiar with the statements contained therein, and that the statements contained therein are true, except those stated to be upon information and belief, and that those she believes to be true.

FANNIE DOLEZILEK

Subscribed and sworn to before me this 5th day of June, 1952.

(Seal)

JACK R. LOUCKS
Notary Public for State of Mont.
Residing at Wolf Point, Montana

My commission expires April 22nd, 1955

(Seal)

Filed August 6, 1952

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MOTION TO DISMISS

COMES NOW the Commissioner of Internal Revenue, by his attorney, Charles W. Davis, Chief Counsel, Bureau of Internal Revenue, and moves the Court to dismiss the above-entitled proceeding for lack of jurisdiction, and as reason therefore shows as follows:

1. That the notice of deficiency upon which this petition is based was mailed to the petitioner by registered mail under date of March 11, 1952.

2. That the copy of the petition served upon respondent bears the stamp of the Tax Court showing the filing date as June 16, 1952.

3. That the lapse of time between March 11, 1952 and June 16, 1952 is 97 days and, accordingly, the petition was not filed with the Tax Court within the time prescribed by Section 272 of the Internal Revenue Code.

WHEREFORE, the premises considered, it is prayed that this motion be granted and the petition dismissed for lack of jurisdiction.

(Signed)

Charles W. Davis
CHARLES W. DAVIS
Chief Counsel
Bureau of Internal Revenue

OF COUNSEL:

WILFORD H. PAYNE,
District Counsel.

DOUGLAS L. BARNES,
JOHN O. DURKAN,
Special Attorneys,
Bureau of Internal Revenue.

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Filed September 22, 1952

• • • • •

MOTION TO QUASH

Comes now the petitioner and moves to quash the respondent's motion to dismiss the above entitled case on the following grounds:

1. That the registered Notice of Deficiency dated the 11th day of March, 1952 was mailed by registered mail to the petitioner but was never received by the petitioner as shown by exhibit A attached hereto and hereof made a part, and that thereafter the office of the Collector of Internal Revenue at Helena, Montana, had in its possession said notice of deficiency and placed on said notice of deficiency a stamp showing that said notice was in the office of the Collector of Internal Revenue at Helena, Montana, on April 21, 1952, as shown by exhibit B hereto attached and hereof made a part, and that at a later date, which date is unknown to the petitioner but known to the respondent, the notice of deficiency was personally handed to the petitioner; that by personally handing the notice to the petitioner, the respondent and the collector of internal revenue at Helena, Montana, abandoned the service by registered mail.

2. That the petitioner is as shown by exhibits C and 17 D, hereto attached and hereof made a part, a full blood Sioux Indian and a ward of the United States Government and could only be served with process by serving the guardian of the Indian ward; that service upon this ward by registered mail is not due process. That furthermore, the petitioner, as shown by exhibit E hereto attached and hereof made a part, cannot read to comprehend the English language, and particularly the deficiency notice, a copy of which is hereto attached and marked exhibit B.

3. That the attorney for the petitioner has written and requested that the hearing be had at some point closer to the petitioner's home than Washington, D. C., so that she would be able to properly present her evidence as outlined

by the facts set out above. That since the Tax Court has denied the right to have the hearing at a place where the petitioner can be present and have her witnesses, it has been necessary for the petitioner to submit this matter by the exhibits hereto attached. That the motion of the government should not be allowed without the petitioner's having a chance to properly present her evidence in a locality close enough to the petitioner's home to allow testimony by witnesses.

WHEREFORE, it is prayed that the motion to quash the respondent's motion to dismiss the petitioner's petition for lack of evidence be granted.

John Marriott Kline
JOHN MARRIOTT KLINE
Attorney for Petitioner
103-105 1st Natl. Bank Bldg.
Glasgow, Montana

18

Exhibit "A"

* * * * *

AFFIDAVIT

STATE OF MONTANA

ss.

COUNTY OF ROOSEVELT

Olive M. Mitchell, being first duly sworn on oath, says:

That she is the postmistress at Poplar, Montana and has been at all times mentioned in this affidavit; that on March 13, 1952 she received a registered letter in her official capacity as postmistress from Salt Lake City, Utah addressed to Mrs. Charles (Fannie) Dolezilek; that the registered number was 07882; that Mrs. Dolezilek never claimed the registered letter; that on April 12, 1952 this letter was returned to Salt Lake City, Utah; that she knows of her own knowl-

edge that this letter was from some branch of the Treasury Department of the United States of America; that the dates set out above were obtained from the official records of her office and which records were kept by herself and were at all times under her control at the post office in Poplar, Montana.

OLIVE M. MITCHELL

Subscribed and sworn to before me this 18th day of September, 1952.

(Seal)

JOSEPH G. MUDD
Notary Public for State of Montana
Residing at Glasgow, Montana

My Commission expires Sept. 15, 1953

19

Exhibit "B"

* * * * *

U. S. TREASURY DEPARTMENT
Office of Internal Revenue Agent in Charge
P. O. Box 2069
Salt Lake City 10, Utah

March 11, 1952

Mrs. Charles (Fannie) Dolezilek
Poplar, Montana

Dear Mrs. Dolezilek:

You are advised that the determination of your income tax liability for the taxable years ended December 31, 1946, December 31, 1947, December 31, 1948, December 31, 1949 and December 31, 1950, discloses a tax liability of \$15,721.52, plus a 25% delinquency penalty of \$3,930.39, plus penalty under Section 294(d), I.R.C. for the year 1950, of \$691.83, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days from the date of the mailing of this letter you may file a petition with The Tax Court of the United States, at its principal address, WASHINGTON 4, D. C., for a redetermination of the deficiency. In counting the 90 days you may not exclude any day unless the 90th day is a Saturday, Sunday, or legal holiday in the District of Columbia, in which event that day is not counted as the 90th day. Otherwise Saturdays, Sundays, and legal holidays are to be counted in computing the 90-day period.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to this office for the attention of 90-day. The signing and filing of this form will expedite the closing of your case by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after receipt of the form, or on the date of assessment, or on the date of payment, whichever is earlier.

Very truly yours,
JOHN B. DUNLAP
Commissioner

By CHARLES I. FOX
Internal Revenue Agent in Charge

(Received April 21, Col. Int. Rev.)

• * • • • • •

20

STATEMENT

Mrs. Charles (Fannie) Dolezilek
Poplar, Montana

Tax liability for the taxable years December 31, 1946 to
December 31, 1950, inclusive

INCOME TAX

25% Delinquency Section 294(d)

Year	Deficiency	Penalty	Penalty
1946	\$ 784.00	\$ 196.00	
1947	883.17	220.79	
1948	5,078.15	1,269.54	
1949	4,652.30	1,163.08	
1950	4,323.90	1,080.98	\$691.83
Totals	<u>\$15,721.52</u>	<u>\$3,930.39</u>	<u>\$691.83</u>

In making this determination of your income tax liability, careful consideration has been given to the report of examination dated January 30, 1952.

Inasmuch as you failed to file returns for the taxable years 1946 to 1950, inclusive, within the time prescribed by law, 25 per centum of the tax for each such respective years has been added thereto in accordance with the provisions of Section 291(a) of the Internal Revenue Code.

Inasmuch as you failed to file a return and to file a declaration of estimated tax or to pay the required amount of tax for the taxable year 1950 within the time prescribed by law, 6 per centum and 10 per centum of the tax for the year 1950 have been added thereto in accordance with the provisions of Section 294(d)(1)(A) and 294(d)(2) of the Internal Revenue Code.

Taxable year ended December 31, 1946

Determination of Net Income

Income—

(a) Crop rentals \$4,939.48

Deductions—

Deductions None

Net income determined \$4,939.48

(Received April 21, Col. Int. Rev.)

90D

In re: Fannie Dolezilek

21

Explanation of Adjustments

(a) It is held that amounts received by you as crop rentals from lands held by you as a member of the Sioux Indian Tribe during the taxable years 1946 to 1950, inclusive, are reportable by you as taxable income for Federal income tax purposes for such respective years as shown below:

<i>Year</i>	<i>Amount</i>
1946	\$ 4,939.48
1947	5,344.81
1948	18,286.70
1949	17,318.85
1950	16,183.24

*Computation of Tax**1946*

Tax computed under Supplement "T" tax table, with adjusted gross income of \$4,939.48 and 1 exemption	\$784.00
Tax assessed (no return filed)	None
Deficiency in income tax	\$784.00
25% Delinquency penalty	\$196.00

*Taxable year ended December 31, 1947**Determination of Net Income*

Income—	
(a) Crop rentals	\$5,344.81
Deductions—	
(b) Standard deduction	500.00
Net income determined	\$4,844.81

Explanation of Adjustments

(a) See item (a) under year 1946, above.

(b) The standard deduction of \$500.00 is allowed in accordance with the provisions of Section 23(aa) of the Internal Revenue Code.

* * * * *

(Received April 21, Col. Int. Rev.) 21

90D

In re: Fannie Dolezilek

22 *Computation of Tax*
1947

Net income	\$4,844.81
Less: Surtax and normal tax exemption (1)	500.00
Surtax and normal tax net income	\$4,344.81
Tentative combined surtax and normal tax	\$ 929.65
Less: 5% reduction	46.48
Total income tax	\$ 883.17
Tax assessed (no return filed)	None
Deficiency in income tax	\$ 883.17
25% Delinquency penalty	\$ 220.79

Taxable year ended December 31, 1948
Determination of Net Income

Income—	
(a) Crop rentals	\$18,286.70
Deductions—	
(b) Standard deduction	500.00
Net income determined	\$17,786.70

Explanation of Adjustments

- (a) See item (a) under year 1946, above.
 (b) See item (b) under year 1947, above.

*Computation of Tax
1948*

Net income		\$17,786.70
Less: Surtax and normal tax exemption (1)		600.00
Surtax and normal tax net income		\$17,186.70
Combined tentative surtax and normal tax	\$5,793.35	
Less: Reduction of 12% of \$5,793.35, plus \$20.00	715.20	
Total income tax		\$5,078.15
Tax assessed (no return filed)		None
Deficiency in income tax		\$5,078.15
25% Delinquency penalty		\$1,269.54

* * * * *

22 (Received April 21, Col. Int. Rev.)
 90D

In re: Fannie Dolezilek

23 *Taxable year ended December 31, 1949*
Determination of Net Income

Income—	
(a) Crop rentals	\$17,318.85
Deductions—	
(b) Standard deduction	500.00
Net income determined	\$16,818.85

Explanation of Adjustments

- (a) See item (a) under year 1946, above.
 (b) See item (b) under year 1947, above.

Computation of Tax
 1949

Net income	\$16,818.85
Less: Surtax and normal tax exemption (1)	600.00
Surtax and normal tax net income	\$16,218.85
Combined tentative surtax and normal tax	\$ 5,309.43
Less: Reduction of 12% of \$5,309.53 plus \$20.00	657.13
Total income tax	\$ 4,652.30
Tax assessed (no return filed)	None
Deficiency in income tax	\$ 4,652.30
25% Delinquency penalty	\$ 1,163.08

*Taxable Year Ended December 31, 1950**Determination of Net Income*

Income—	
(a) Crop rentals	\$16,183.24
Deductions—	
(b) Standard deduction	500.00
Net income determined	\$15,683.24

Explanation of Adjustments

- (a) See item (a) under year 1946, above.
 (b) See item (b) under year 1947, above.

* * * * * * *

90D

In re: Fannie Dolezilek

24

Computation of Tax
1950

Net income	\$15,683.24
Less: Surtax and normal tax exemption (1)	600.00
Surtax and normal tax net income	\$15,083.24
Combined tentative surtax and normal tax	\$ 4,769.12
Less: Reduction of \$52.00 plus 9% of \$4,369.12	445.22
Total income tax	\$ 4,323.90
Tax assessed (no return filed)	None
Deficiency in income tax	\$4,323.90
25% Delinquency penalty	\$1,080.98
Penalties under Section 294(d), IRC—6%	\$259.43
10%	432.40
	\$ 691.83

* * * * *

24 (Received April 21, Col. Int. Rev.)

27 Exhibit No. "C"

The Tax Court of the United States

DOCKET NO. 42075

FANNIE DOLEZILEK,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

AFFIDAVIT

STATE OF MONTANA }
 COUNTY OF ROOSEVELT } ss.

James D. Crawford, being first duly sworn on oath, says:

That he is the superintendent of the Fort Peck Indian Agency with its offices at Poplar, Montana; that he is in charge of the official records of the agency; that his records show that Mrs. Charles (Fannie) Dolezilek was born in 1905, Fannie Red Fox, and is a full blood Sioux Indian. That she is a ward of the United States Government and has allotment number 777, and account number R-3.

JAMES D. CRAWFORD

Subscribed and sworn to before me this 18th day of September, 1952.

(Seal)

JOSEPH G. MUDD
 Notary Public for State of Montana
 Residing at Glasgow, Montana

My Commission expires Sept. 15, 1953

* * * * *

28

Exhibit "D"

The Tax Court of the United States

DOCKET NO. 42075

FANNIE DOLEZILEK,
 Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
 Respondent.

AFFIDAVIT

COUNTY OF ROOSEVELT }
 STATE OF MONTANA } ss.

Fannie Dolezilek, being first duly sworn on oath, says:

That she is a full blood Sioux Indian; that she is a ward of the United States Government and on the rolls of the Fort Peck Indian Agency; that she has seen the ninety-day Deficiency Notice sent by the United States Government to her concerning her income tax; that the first time she ever saw this Notice of Deficiency was when it was personally handed to her by someone whom she does not know; that she does not know when this Notice was handed to her; that she never received this Notice of Deficiency through the mail; that she tried to read and understand the deficiency notice but was unable to understand the same.

That she was informed by her attorney, John Marriott Kline of Glasgow, Montana, that the tax court was trying to dismiss her petition and that in order to stop the same it might be necessary for her personally, and other witnesses to go to Washington, D. C.; that she personally cannot go to Washington, D. C., at this time; nor does she have the means nor has she been able to force in any manner her witnesses to go to Washington, D. C., to appear in her behalf so that it could be shown that she first received the deficiency notice by having the same handed to her. That she requested her attorney to have the hearing, if possible, at some place closer to her home at Poplar, Montana, than Washington, D. C.

FANNIE DOLEZILEK

Subscribed and sworn to before me this 19th day of September, 1952.

(Notarial Seal)

JOSEPH G. MUDD
Notary Public for State of Montana
Residing at Glasgow, Montana

My Commission expires Sept. 15, 1953

* * * * *

Exhibit No. "E"

The Tax Court of the United States

DOCKET NO. 42075

FANNIE DOLEZILEK,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

AFFIDAVIT

STATE OF MONTANA }
COUNTY OF ROOSEVELT } ss.

Dolly Akers, being first duly sworn on oath, says:

That she is a resident of the state of Montana and a citizen of the United States of America; that she has known Mrs. Charles (Fannie) Dolezilek since about 1917; that Mrs. Dolezilek is a full blood Sioux Indian and a ward of the United States Government; that for a number of years your affiant had very close contact with Mrs. Dolezilek because your affiant was from 1935 to 1938 a welfare worker for the United States Government on the Fort Peck Indian Reservation; that Mrs. Dolezilek was one of her welfare cases at that time on the Fort Peck Reservation; that she many times visited Mrs. Dolezilek, in her capacity as caseworker, and saw Mrs. Dolezilek try to read; that Mrs. Dolezilek can

read words written in English but cannot comprehend what she is reading; that your affiant, from her conversations and from observing her reading, knows that Mrs. Dolezilek is very ignorant and that her intelligence is subnormal; that your affiant has seen the ninety day deficiency notice sent out by the Collector of Internal Revenue's office to Mrs. Dolezilek and she knows from her observations of Mrs. Dolezilek that she could not comprehend what the notice was about.

DOLLY AKERS

Subscribed and sworn to before me this 18th day of September, 1952.

JOSEPH G. MUDD

Notary Public for State of Montana
Residing at Glasgow, Montana

My Commission expires Sept. 15, 1953

(Notarial Seal)

* * * * *
* * * * *

31

DOCKET NO. 42075

32 The Tax Court of the United States
Washington

FANNIE DOLEZILEK,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

ORDER

On August 6, 1952, respondent filed herein a Motion to Dismiss for lack of jurisdiction, which motion was heard by

the Court on September 24, 1952. On September 22, 1952, petitioner filed a Motion to Quash respondent's said motion, to which was attached Exhibits "A" to "E", inclusive, which said Motion to Quash was also considered by the Court at the time of said hearing. Both parties appeared at the hearing by counsel, who presented oral argument. The matter was taken under advisement, and time was granted for the filing of briefs. After due consideration of the arguments of counsel, and of the facts established by the pleadings herein, the affidavits and exhibits attached to petitioner's "Motion of Quash", and the exhibits introduced in evidence at the hearing, and for the reasons advanced in respondent's brief, and on the further authority of *Oscar Block, et al.*, 2 T.C. 761, it is

ORDERED that petitioner's "Motion to Quash" be and is hereby denied; and it is further

ORDERED that respondent's Motion to Dismiss this proceeding for lack of jurisdiction be and it is hereby granted.

(Signed) JOHN W. KERN
Judge

Dated: Washington, D. C.
January 6, 1953.

33 Filed March 5, 1953

* * * * *

PETITION FOR APPEAL

To The Honorable United States Court of Appeals for the District of Columbia:

I.

The petition of Fannie Dolezilek respectfully shows:

That your petitioner on June 16, 1952, filed in the Tax Court of the United States a petition for a redetermination of the deficiency set forth by the Commissioner of Internal

Revenue in his notice of deficiency. (90D-LHJ) That the Respondent made its motion to dismiss the above entitled proceedings for lack of jurisdiction for the reason that the petition was based on the said notice of deficiency which was mailed to petitioner on March 11, 1952, and the petition was not filed until 97 days after the mailing of the petition.

That your petitioner filed a motion to quash the motion to dismiss on the following grounds:

1/ That the registered Notice of Deficiency dated the 11th day of March, 1952 was mailed by registered mail to the petitioner but was never received by the petitioner as shown by exhibit A, attached to the Motion to Quash, and
34 that thereafter the office of the Collector of Internal Revenue at Helena, Montana, had in its possession said Notice of Deficiency and said notice of deficiency had placed on it a stamp showing that said notice was in the office of the Collector of Internal Revenue at Helena, Montana, on April 21, 1952, and that at a later date, which date is unknown to the petitioner but known to the respondent, the notice of deficiency was personally handed to the petitioner; that by personally handing the notice to the petitioner, the respondent and the collector of internal revenue at Helena, Montana, abandoned the service by registered mail.

2/ That the petitioner is a full blood Sioux Indian and a ward of the United States Government and could only be served with process by serving the guardian of the Indian ward; that service upon this ward by registered mail is not due process. That furthermore, the petitioner, cannot read to comprehend the English language, and particularly the deficiency notice.

II.

That on January 6, 1953, the Honorable John W. Kern, Judge of the Tax Court of the United States, by an order denied the motion to quash and granted the motion to dis-

miss the proceedings for lack of jurisdiction. That from this order the petitioner seeks to appeal to the United States Court of Appeals for the District of Columbia.

35

III.

That the petitioner is a resident of Roosevelt County, Montana, and has been at all times mentioned in this petition. That the income tax in dispute was determined on income earned in Roosevelt County, Montana. That Roosevelt County, Montana, is in the jurisdiction of the United States Circuit Court of Appeals for the Ninth Circuit. That the petitioner never filed an income tax petition for the years involved in the notice of deficiency.

Wherefore, petitioner prays that the order of the Tax Court of the United States of January 6, 1953, be reviewed by the Honorable Court, and that said order be set aside and the matter be returned to the Tax Court of the United States for determination on its merits.

JOHN MARRIOTT KLINE,
Attorney for Petitioner,
103-5 First National Bank Bldg.,
Glasgow, Montana.

Dated February 28, 1953
Glasgow, Montana

36

Filed March 5, 1953

* * * * *

NOTICE OF FILING PETITION FOR REVIEW

TO:

Charles W. Davis,
Chief Counsel,
Bureau of Internal Revenue.

You are hereby notified that Fannie Dolezilek did, on the 5th day of March, 1953, file with the Clerk of The Tax Court

of the United States, at Washington, D. C., a petition for review by the United States Court of Appeals for the District of Columbia Circuit, of the decision of this Court heretofore rendered in the above-entitled case. Copy of the petition for review as filed is hereto attached and served upon you.

Dated this 5th day of March, 1953.

(Signed) Victor S. Mersch,
The Tax Court of the United States.

Service of copy of Petition for Review acknowledged this 5th day of March, 1953.

(Signed) CHARLES W. DAVIS,
Chief Counsel.
Bureau of Internal Revenue,
Attorney for Respondent.

37

Filed March 18, 1953

• • • • • • • •

STATEMENT OF POINTS ON APPEAL

Petitioner herewith presents the points upon which she claims the Tax Court of the United States erred:

1. In denying the petitioner's motion to quash the respondent's motion to dismiss the action.
2. In granting the respondent's motion to dismiss this proceeding for lack of jurisdiction.

JOHN MARRIOTT KLINE,
Attorney for Petitioner,
First National Bank Bldg.,
Glasgow, Montana

STATE OF MONTANA }
COUNTY OF VALLEY } ss.

John Marriott Kline, being first duly sworn on oath, says: That he is the attorney for the petitioner in the foregoing matter; that on March 16, 1953, he mailed by air mail a copy of the foregoing instrument to Charles W. Davis, Chief Counsel, Bureau of Internal Revenue, U. S. Treasury Department, Washington 25, D. C., with postage prepaid; that there is direct mail service between Glasgow, Montana, and Washington, D. C.

JOHN MARRIOTT KLINE

Subscribed and sworn to before me this 16th day of March, 1953.

(Notarial Seal)

JOSEPH G. MUDD
Notary Public for State of Montana
Residing at Glasgow, Montana

My Commission expires Sept. 15, 1953

38

Filed March 18, 1953

* * * * *

DESIGNATION OF RECORD

The petitioner, Fannie Dolezilek by her attorney, hereby designates under Rule 75 the following to constitute the transcript of record on appeal in the above entitled, and, namely:

1. Petition.
2. Motion to Dismiss.
3. Motion to Quash with exhibits attached.
4. Minute entry of Court showing that exhibits attached

to Motion to Quash were received in evidence. Not of record.

5. Order of January 9, 1953.
6. Statement of points to be relied upon by petitioner.
7. This Designation of Contents of record on appeal.

JOHN MARRIOTT KLINE
Attorney for Petitioner,
First National Bank Bldg.,
Glasgow, Montana

39

39 STATE OF MONTANA ss.
 COUNTY OF VALLEY

John Marriott Kline, being first duly sworn on oath, says: That he is the attorney for the petitioner in the foregoing matter; that on March 16th, 1953, he mailed by air mail a copy of the foregoing instrument to Charles W. Davis, Chief Counsel, Bureau of Internal Revenue, U. S. Treasury Department, Washington 25, D. C., with postage prepaid; that there is direct mail service between Glasgow, Montana, and Washington, D. C.

JOHN MARRIOTT KLINE

Subscribed and sworn to before me this 16th day of March, 1953.
(Notarial Seal)

JOSEPH G. MUDD
Notary Public for State of Montana
Residing at Glasgow, Montana

My Commission expires Sept. 15, 1953

40 Filed March 18, 1953

NOTICE OF FILING DESIGNATION OF CONTENTS
OF RECORD ON REVIEW

TO:

Charles W. Davis
Chief Counsel,
Bureau of Internal Revenue.

You are hereby notified that Fannie Dolezilek did, on the 18th day of March, 1953, file with the Clerk of The Tax Court of the United States, at Washington, D. C., a designation of contents of record on review for the District of Columbia Circuit, in the above-entitled case. Copy of the designation of contents of record on review as filed is hereto attached and served upon you.

Dated this 18th day of March, 1953.

(Signed) Victor S. Mersch,
The Tax Court of the United States

Service of copy of designation acknowledged this 18th day of March, 1953.

CHARLES W. DAVIS,
Chief Counsel,
Bureau of Internal Revenue,
Attorney for Respondent.

United States Court of Appeals
For the District of Columbia Circuit

FANNIE DOLEZILEK, *Petitioner*

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent*

On Petition for Review of the Order of the Tax Court
of the United States

BRIEF AND APPENDICES FOR THE RESPONDENT

United States Court of Appeals
For the
District of Columbia Circuit

FILED SEP 11 1953

Joseph W. Stewart
CLERK

H. BRIAN HOLLAND,
Assistant Attorney General.

ELLIS N. SLACK,
WALTER AKERMAN, JR.,
*Special Assistants to the
Attorney General.*

QUESTION PRESENTED

In the opinion of the respondent the question should be stated as follows:

A statutory notice of deficiency was mailed to the taxpayer at her correct address by registered mail. It was returned by the post office as unclaimed-refused. Thereafter, and while there was ample time left within which the taxpayer could file a petition with the Tax Court, the notice of deficiency was manually delivered to her by a deputy collector. The taxpayer's petition was not filed with the Tax Court until 97 days after the registered mailing to her of the notice of deficiency. The question is whether the Tax Court was correct in dismissing the taxpayer's petition for redetermination for lack of jurisdiction.

**United States Court of Appeals
For the District of Columbia Circuit**

No. 11,766

FANNIE DOLEZILEK, *Petitioner*

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent*

**On Petition for Review of the Order of the Tax Court
of the United States**

BRIEF AND APPENDICES FOR THE RESPONDENT

OPINION BELOW

The Tax Court rendered no opinion. The order of the Tax Court (R. 21-22)¹ from which this appeal is taken is unreported.

JURISDICTION

This appeal is taken from an order of the Tax Court, entered January 6, 1953, dismissing the instant case for lack of jurisdiction. (R. 21-22.) The petition to review the order of dismissal was filed March 5, 1953. (R. 22-24.) Jurisdiction is conferred upon this Court by Section 1141(a) of the Internal Revenue Code, as amended by Section 36 of the Act of June 25, 1948. The case is brought to this Circuit pursuant to Section 1141(b)(1) of the Code, because no return of the taxes involved was made.

¹ Record references are to the Appendix to the brief for the petitioner.

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The order of the Tax Court, dismissing the taxpayer's petition for lack of jurisdiction, is correct	4
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CITATIONS

CASES:

<i>Blackbird v. Commissioner</i> , 14 B.T.A. 1247, reversed, 38 F. 2d 976	10
<i>Brunt v. Commissioner</i> , 5 B.T.A. 134	10
<i>Chambers v. Lucas</i> , 59 App. D.C. 327	4
<i>Choteau v. Burnet</i> , 283 U.S. 691	9
<i>Chouteau v. Commissioner</i> , 14 B.T.A. 1254, affirmed, 38 F. 2d 976, affirmed, 283 U.S. 691	10
<i>Commissioner v. Rosenheim</i> , 132 F. 2d 677	8
<i>Day v. Commissioner</i> , 12 B.T.A. 161	7
<i>Eppler v. Commissioner</i> , 188 F. 2d 95	7
<i>Jones v. Taunah</i> , 186 F. 2d 445, certiorari denied, 341 U.S. 904 ..	9
<i>Lewis-Hall Iron Works v. Blair</i> , 57 App. D.C. 364, certiorari denied, 277 U.S. 592	4
<i>Scott v. Commissioner</i> , 8 T.C. 126	10
<i>Stebbins' Estate v. Helvering</i> , 74 App. D.C. 21	4, 5, 10
<i>Strom v. Commissioner</i> , 6 T.C. 621, affirmed <i>per curiam</i> , 158 F. 2d 520	9, 10
<i>Superintendent v. Commissioner</i> , 295 U.S. 418	9

STATUTE:

Internal Revenue Code:

Sec. 272 (26 U.S.C. 1946 ed., Sec. 272)	4, 5, 9, 13
Sec. 312 (26 U.S.C. 1946 ed., Sec. 312)	10, 14

MISCELLANEOUS:

Tax Court's Rules of Practice:

Rule 30	6
Rule 31	6
Treasury Regulations 111, Sec. 29.312-1	10, 14

**United States Court of Appeals
For the District of Columbia Circuit**

No. 11,766

FANNIE DOLEZILEK, *Petitioner*

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent*

**On Petition for Review of the Order of the Tax Court
of the United States**

BRIEF AND APPENDICES FOR THE RESPONDENT

OPINION BELOW

The Tax Court rendered no opinion. The order of the Tax Court (R. 21-22)¹ from which this appeal is taken is unreported.

JURISDICTION

This appeal is taken from an order of the Tax Court, entered January 6, 1953, dismissing the instant case for lack of jurisdiction. (R. 21-22.) The petition to review the order of dismissal was filed March 5, 1953. (R. 22-24.) Jurisdiction is conferred upon this Court by Section 1141(a) of the Internal Revenue Code, as amended by Section 36 of the Act of June 25, 1948. The case is brought to this Circuit pursuant to Section 1141(b)(1) of the Code, because no return of the taxes involved was made.

¹ Record references are to the Appendix to the brief for the petitioner.

STATUTES AND REGULATIONS INVOLVED

The pertinent provisions of the statute and Regulations are set forth in Appendix A, *infra*.

STATEMENT

The material facts may be summarized as follows:

The petitioner, Fannie Dolezilek, hereinafter referred to as the taxpayer, is an individual residing in Montana whose mailing address is Poplar, Montana. (R. 2.) No income tax returns were filed by the taxpayer for the years 1946 through 1950, inclusive. (R. 2-3.) On March 11, 1952, the Commissioner mailed to the taxpayer at Poplar, Montana, by registered letter a statutory notice of deficiency in which he determined deficiencies and penalties with respect to each of the five taxable years mentioned. (R. 10-17; Ex. A and mailing list, Appendix B, *infra*.)

The notice of deficiency was returned by the post office at Poplar, Montana, stamped Unclaimed—Refused, to the office of the Internal Revenue Agent in Charge at Salt Lake City, Utah. (Exs. A and C, Appendix B, *infra*.) The agent in charge at Salt Lake City forwarded the notice to the Collector at Helena, Montana, for assignment to a deputy collector to be manually delivered to the taxpayer, and the notice was marked as received April 21 by the Collector of Internal Revenue. (Ex. C, Appendix B, *infra*; R. 10-17.) Thereafter on April 25, 1952, the notice was manually delivered to the taxpayer by a deputy collector. (Ex. B, Appendix B, *infra*.) On June 16, 1952, the taxpayer filed a petition for redetermination with the Tax Court. (R. 2-6.)

The Commissioner moved to dismiss the petition for lack of jurisdiction (R. 7), and the taxpayer filed a motion to quash the Commissioner's motion to dismiss (R. 8-9). The Tax Court, on January 6, 1953, entered an order denying the taxpayer's motion to quash and granting the Commissioner's motion to dismiss. (R. 21-22.) From the Tax Court's order, the taxpayer takes this appeal.

SUMMARY OF ARGUMENT

The Internal Revenue Code provides for the filing of a petition for redetermination with the Tax Court within 90 days after a notice of deficiency is mailed to the taxpayer. Timely filing of such petition is essential to the Tax Court's jurisdiction. Here, taxpayer's petition was filed 97 days after the mailing of the notice. Accordingly, the Tax Court was without jurisdiction.

Pursuant to the statute, notice was sent by registered mail to taxpayer's correct address, she was twice notified of it by the post office, but refused to accept it. While the statute only requires registered mailing of the notice and not actual receipt by the taxpayer, nevertheless, when the notice was returned as unclaimed—refused by the post office, it was assigned for manual delivery by a deputy collector and a notation placed on the notice indicating receipt by the Collector's office to which it was forwarded. The notice was manually delivered to the taxpayer while there was ample time left within which to file a petition with the Tax Court. There was, concededly, but one mailing of the notice and the subsequent manual delivery did not constitute service of the notice under the statute. There was nothing to induce the belief that taxpayer had other than the usual 90 days from the mailing date of the notice within which to file her petition. It is submitted that the Commissioner did not abandon his registered mailing or do anything to mislead the taxpayer and her attorney as to the time for filing the petition.

In a motion directed solely to quashing the Commissioner's motion to dismiss, it was stated that taxpayer is an Indian ward of the Government and could only be served with process by service upon her guardian. This motion was only a reply to the motion to dismiss, and, since the statement made does not controvert the allegation of late filing urged as the ground for dismissal, it is mere surplusage. Even assuming an issue presented, however, the statement that the taxpayer could not be served with a notice of deficiency is without merit. It is well settled that Indians are subject to federal income tax with respect

to their income, whether or not derived from restricted property, unless specifically exempted by treaty or other law. No such treaty or law has been indicated in this case. It follows that the taxpayer may be given notice of a deficiency with respect to her tax liability. Under the provisions of the Code, such notice is not invalid simply because it is served upon a ward. A notice to the Commissioner of fiduciary relationship, in accordance with the requirement of the applicable provisions of the statute and Treasury Regulations, might have entitled the taxpayer to have the notice of deficiency served upon a fiduciary. However, no such notice was given.

It clearly appearing that the taxpayer failed to file her petition with the Tax Court within 90 days after the mailing of a notice of deficiency, as required by law, it is submitted that the Tax Court was correct in dismissing the petition for lack of jurisdiction.

ARGUMENT

The Order of the Tax Court, Dismissing the Taxpayer's Petition for Lack of Jurisdiction, Is Correct

Section 272(a)(1) of the Internal Revenue Code, Appendix A, *infra*, authorizes the Commissioner, upon the determination of a deficiency, to send notice thereof to the taxpayer by registered mail. It permits the taxpayer to file a petition with the Tax Court for a redetermination within 90 days after such notice of deficiency is mailed. The requirements of the provisions of this section of the statute are mandatory, and strict compliance with them is essential to the Tax Court's jurisdiction. *Stebbins' Estate v. Helvering*, 121 F. 2d 892, 74 App. D.C. 21; *Chambers v. Lucas*, 41 F. 2d 299, 59 App. D. C. 327; *Lewis-Hall Iron Works v. Blair*, 23 F. 2d 972, 57 App. D. C. 364, certiorari denied, 277 U. S. 592. In the instant case, it is undisputed that the Commissioner mailed a notice of deficiency to the taxpayer by registered mail on March 11, 1952. (Br. 7-8; R. 10; Ex. A and certified mailing list, Appendix B, *infra*.) The taxpayer's petition for redetermination was not filed with the Tax Court until June 16, 1952, a period of 97

days after the statutory notice of deficiency was mailed to her by registered mail. (R. 2.) Upon this state of the facts,, absent a motion by either of the parties, the Tax Court would have had to order the dismissal of the petition upon its own motion, since the requirement that the petition be filed within 90 days after the mailing of the notice is jurisdictional. *Stebbins' Estate v. Helvering, supra.*

The Commissioner fully complied with the provisions of Section 272(a)(1) of the Internal Revenue Code in mailing the notice of deficiency to the taxpayer by registered mail. Admittedly, the notice was mailed to the taxpayer's correct address. (R. 2.) The evidence discloses that the taxpayer was twice given notice by the post office at Poplar, Montana, of the registered letter, and that she refused to accept it. (Exs. A and B, Appendix B, *infra.*) The letter was thereafter returned to the office of the Internal Revenue Agent in Charge at Salt Lake City, Utah, where it was forwarded to the Collector at Helena, Montana, for manual delivery to the taxpayer by the deputy collector and the notice marked as having been received by the Collector on April 21. (Ex. C, Appendix B, *infra*; R. 10-17.) It is conceded by the taxpayer that if, at this point, the Commissioner had done nothing further, good and valid service of the notice would have been made. (Br. 8.) Indeed, the contrary is not even arguable, since Section 272(k) of the Code, Appendix A, *infra*, provides that a notice shall be sufficient if mailed to the taxpayer at his last known address, and obviously actual receipt by the taxpayer is not necessary.

Although the Commissioner's responsibility under the statute to give notice to the taxpayer was satisfied when he mailed the notice to her by registered letter, he went beyond what he was required to do and had the notice manually delivered to her by a deputy collector so that she might have an opportunity to seek a redetermination in the Tax Court. (Ex. B, Appendix B, *infra.*) We call attention to the fact that the Commissioner did not delay in delivering the notice to the taxpayer until she had inadequate time to prepare her petition and file it with the Tax Court. On

the contrary, the notice was placed in her hands by the deputy collector only 5 days after it was received in the Collector's office, at which time the taxpayer had 45 days still remaining within which she could file her petition with the Tax Court. It is contended, as a ground for taxpayer's motion to quash, that by personally handing the notice to the taxpayer, through his deputy collector, the Commissioner abandoned his registered mailing. (R. 8.) We failed to see any logic in this contention. There is no apparent reason why the result which obtains when a notice, which has been mailed to the taxpayer by registered mail, is subsequently manually delivered to the taxpayer by an employee of the Commissioner should differ from the result when such notice is manually delivered, in the ordinary course of events, by an employee of the Post Office Department. However, it is argued by the taxpayer, on brief, that by marking the notice as having been received April 21 by the Collector of Internal Revenue for the District of Montana, when the notice was received in that office for manual delivery to the taxpayer, the Commissioner misled the taxpayer and her attorney as to the time within which her petition had to be filed with the Tax Court.* It should be emphasized that nowhere has the taxpayer asserted that there was a second mailing of the notice of deficiency after

~~2 While we are not here disposed to raise technical defenses relating to the evidence, since the taxpayer is merely seeking the right to litigate in the Tax Court, nevertheless, we feel obliged to call the Court's attention to the fact that the first mention which we find of the contention that the taxpayer and her attorney were misled by the stamping of the notice in the Collector's office consists of statements to that effect in the taxpayer's briefs. We find nothing in the proof or the pleadings to support this statement. It is provided in Rule 31(f) of the Tax Court's Rules of Practice that statements in the petition, or *ex parte* affidavits and briefs, do not constitute evidence. In this connection, we might also observe that the several affidavits which were attached to the taxpayer's motion to quash were not admitted in evidence at the hearing before the Tax Court. See Rule 30 of the Tax Court's Rules of Practice which indicates that upon a contested motion any attempt to submit issues of fact upon affidavits, as here, would be precluded by the restrictions set forth in Rule 31. We note that the Tax Court considered the taxpayer's affidavits. (R. 22.) However, the Tax Court's error in so doing, if error there was, was harmless, since the Court reached the correct result.~~

the registered mailing of March 11, 1952. Such an assertion would be wholly without support in the evidence. Nor was there anything which could reasonably have led the taxpayer and her attorney to believe that there was a second mailing. The stamp which was placed on the notice indicating receipt by the Collector of Internal Revenue does not bear the remotest resemblance to a mailing stamp and in no manner indicates mailing. We respectfully submit that, in this notation of receipt followed by the manual delivery by the deputy collector, there is nothing which could induce the belief that there was a second mailing of the notice of deficiency.

If it be the taxpayer's position that the manual delivery to her constituted a second notice, then such position is obviously without merit. The statute prescribes no method for service of the notice other than mailing. The only measure as to the period of time within which a petition must be filed in order to give the Tax Court jurisdiction is predicated upon the mailing date. It is evident, therefore, that the statute does not contemplate manual delivery as a permissible method of serving the notice of deficiency, and the Tax Court has held that it has no jurisdiction of a petition based upon a notice of deficiency which was manually delivered. *Day v. Commissioner*, 12 B.T.A. 161. It follows that if the registered mailing of the notice of deficiency of March 11, 1952, did not constitute a sufficient notice, then no valid notice was given subsequently by the manual delivery to the taxpayer.

The only authority cited in support of the taxpayer's contention, that the manual delivery of the notice of deficiency constituted an abandonment of the prior registered mailing, is the case of *Eppler v. Commissioner*, 188 F. 2d 95 (C.A. 7th). (Br. 8-9.) That case is clearly distinguishable on its facts from the case at bar. There, the Commissioner mailed a notice of deficiency, by registered mail, to the taxpayer at the wrong address and, when it was returned as undelivered, he mailed the notice to the taxpayer a second time by registered mail at his correct address. As a result, the taxpayer was lead to believe that he had ninety days

from the second mailing date within which to file his petition. The court held that, by the second registered mailing of the notice, the Commissioner withdrew or abandoned his earlier notice of deficiency. Here, it is conceded (Br. 9) that there was no second service made by mail.

We believe that, in undertaking to have the notice of deficiency manually placed in the taxpayer's hands after it was returned as undelivered by the post office, the Commissioner not only acted properly, but that he should take such action in the taxpayer's interest when it is reasonably possible for him to do so. However, if, as is urged here, the manual delivery of an undelivered notice of deficiency constitutes an abandonment of the earlier registered mailing, then the Commissioner would certainly be ill advised to continue the practice of attempting to deliver notices which have been returned as undelivered by the postal authorities.

We respectfully submit that the manual delivery of the notice to the taxpayer in this case was not an abandonment of the registered mailing of the notice of deficiency to her on March 11, 1952, and that good and valid service of the notice upon the taxpayer was made by the mailing on that date.

It is alleged in the taxpayer's motion to quash that she is a full blood Sioux Indian and a ward of the Government and could only be served with process by serving her guardian. (R. 8.) It should be noted that the only relief requested in the motion to quash is that the Commissioner's motion to dismiss be quashed. (R. 9.) It would seem, therefore, that the motion to quash is, in substance, no more than a reply to the motion to dismiss. The paragraph of the motion to quash referring to the taxpayer's alleged status as an Indian ward of the Government does

Compare *Commissioner v. Rosenheim*, 132 F. 2d 677 (C.A. 3d), where, as in the instant case, a notice of deficiency which had been mailed by registered mail and returned as undelivered was subsequently manually delivered by an employee of the Bureau of Internal Revenue. While the contention made by the taxpayer, here, does not appear to have been raised, it is, nevertheless, pertinent to note that the court there regarded the taxpayer's petition as timely filed from the date of the registered mailing.

not answer the jurisdictional defect of failure to timely file the petition for redetermination stated as the ground for the Commissioner's motion to dismiss, and, accordingly, we believe, may properly be treated as a mere redundancy. It is, likewise, pertinent to note that by bringing the instant proceeding in the Tax Court, in her own behalf, the taxpayer maintains that she is competent to litigate, rather than, consistent with her contentions respecting her status, bringing the action through her alleged guardian as she might have done.

Assuming, for the purpose of argument, the taxpayer's status as an Indian ward of the Government and that an issue had been presented as a result of such status, any suggestion (Br. 9-10) that the validity of the Commissioner's notice of deficiency would be affected thereby is without any apparent legal basis. While we find no decisions directly determining the point which taxpayer would raise here, the answer seems clearly indicated by the cases. It is well settled that an Indian is a citizen of the United States and is individually subject to federal taxes on his income unless such income is clearly shown to have been specifically exempted from tax by treaty or by some act of Congress, and it is immaterial that such income was derived from restricted property. *Choteau v. Burnet*, 283 U.S. 691; *Superintendent v. Commissioner*, 295 U.S. 418; *Jones v. Taunah*, 186 F. 2d 445 (C.A. 10th), certiorari denied, 341 U.S. 904; *Strom v. Commissioner*, 6 T.C. 621, affirmed *per curiam*, 158 F. 2d 520 (C.A. 9th). It is sufficient to state that the taxpayer has not pointed out, nor were we able to find, anything in the treaties with, or laws respecting, the Sioux Indians which renders the taxpayer exempt from the federal income tax. The taxpayer being an individual subject to the federal income tax, it would seem inevitably to follow that she may be given notice of a deficiency with respect to her tax liability.

Clearly, a notice of deficiency is not rendered invalid merely because it is served upon one who occupies the status of a ward. See Section 272(k) of the Code, Appendix A, *infra*. It might have been proper for the Commissioner

to serve the notice of deficiency upon the taxpayer's alleged guardian instead of the taxpayer, had the Commissioner been given the notice of fiduciary relationship prescribed by law. Section 312(a) and (c) of the Code, and Section 29.312-1 of Treasury Regulations 111, Appendix A, *infra*. Admittedly, however, no such notice was given. It would be wholly unreasonable and contrary to the provisions of the applicable statute and Treasury Regulations to presume that the Commissioner had notice merely because he is an officer of the executive branch of the Government.

The several cases relied upon by the taxpayer (Br. 10), in support of her contention that the notice of deficiency could not be served upon her because she was a ward of the Government, are wholly inapposite here since none of the cases cited involve the imposition of the federal income tax upon the income of an Indian. The practice of mailing the notice of deficiency to taxpayer-Indians has been followed, whether they held a certificate of competency or otherwise, and the Tax Court has always taken jurisdiction where the notice was so mailed. See *Brunt v. Commissioner*, 5 B.T.A. 134; *Blackbird v. Commissioner*, 14 B.T.A. 1247, reversed on other grounds, 38 F. 2d 976 (C.A. 10th); *Choteau v. Commissioner*, 14 B.T.A. 1254, affirmed, 38 F. 2d 976 (C.A. 10th), affirmed, 283 U.S. 691; *Strom v. Commissioner*, *supra*; *Scott v. Commissioner*, 8 T.C. 126.

If the order of the Tax Court be affirmed, the taxpayer will not be deprived of a day in court for, as this Court noted in *Stebbins' Estate v. Helvering*, *supra*, p. 894, a taxpayer may still pay the tax and bring a suit for refund.

It is respectfully submitted that the Tax Court was correct in holding that it was without jurisdiction with respect to the taxpayer's petition for redetermination which, undeniably, was filed more than 90 days after the notice of deficiency was mailed to her.

CONCLUSION

The order of the Tax Court is correct and should be affirmed.

Respectfully submitted,

H. BRIAN HOLLAND,
Assistant Attorney General.

ELLIS N. SLACK,
WALTER AKERMAN, JR.,
*Special Assistants to the
Attorney General.*

SEPTEMBER, 1953.

APPENDIX

APPENDIX A

Internal Revenue Code:

SEC. 272 [As amended by International Organizations Immunities Act, c. 652, 59 Stat. 699, Sec. 203].
PROCEDURE IN GENERAL.

(a) (1) *Petition to The Tax Court of the United States.*⁴—If in the case of any taxpayer, the Commissioner determines that there is a deficiency in respect of the tax imposed by this chapter, the Commissioner is authorized to send notice of such deficiency to the taxpayer by registered mail. Within ninety days after such notice is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the ninetieth day), the taxpayer may file a petition with the Tax Court of the United States for a redetermination of the deficiency. No assessment of a deficiency in respect of the tax imposed by this chapter and no distraint or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such ninety-day period, nor, if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final. Notwithstanding the provisions of section 3653(a) the making of such assessment or the beginning of such proceeding or distraint during the time such prohibition is in force may be enjoined by a proceeding in the proper court. * * *

* * *

(k) *Address for Notice of Deficiency.*—In the absence of notice to the Commissioner under section 312(a) of the existence of a fiduciary relationship, notice of a deficiency in respect of a tax imposed by this chapter, if mailed to the taxpayer at his last known address, shall be sufficient for the purposes of this

⁴ The name of the Board of Tax Appeals was changed to the Tax Court of the United States by Section 504 of the Revenue Act of 1942, c. 619 56 Stat. 798.

chapter even if such taxpayer is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence.

(26 U.S.C. 1946 ed., Sec. 272.)

SEC. 312. NOTICE OF FIDUCIARY RELATIONSHIP.

(a) *Fiduciary of Taxpayer.*—Upon notice to the Commissioner that any person is acting in a fiduciary capacity such fiduciary shall assume the powers, rights, duties, and privileges of the taxpayer in respect of a tax imposed by this chapter (except as otherwise specifically provided and except that the tax shall be collected from the estate of the taxpayer), until notice is given that the fiduciary capacity has terminated.

* * *

(c) *Manner of Notice.*—Notice under subsection (a) or (b) shall be given in accordance with regulations prescribed by the Commissioner with the approval of the Secretary.

(26 U.S.C. 1946 ed., Sec. 312.)

Treasury Regulations 111, promulgated under the Internal Revenue Code:

Sec. 29.312-1. *Fiduciaries.*— * * * The “notice to the Commissioner” provided for in section 312 shall be a written notice signed by the fiduciary and filed with the Commissioner. The notice must state the name and address of the person for whom the fiduciary is acting, and the nature of the liability of such person; that is, whether it is a liability for tax, and, if so, the year or years involved, or a liability at law or in equity of a transferee of property of a taxpayer, or a liability of a fiduciary under section 3467 of the Revised Statutes, as amended (paragraph 81 of the Appendix to these regulations), in respect of the payment of any tax from the estate of the taxpayer. * * *

If the notice of the fiduciary capacity described in the preceding paragraph is not filed with the Commissioner prior to the sending of notice of a deficiency by registered mail to the last known address of the taxpayer (see section 272(a)), or the last known address of the transferee or other person subject to liability (see section 311), no notice of the deficiency will be sent to the fiduciary. In such a case the sending of the notice to the last known address of the taxpayer, transferee, or other person, as the case may be, will be a sufficient compliance with the requirements of the Internal Revenue Code, even though such taxpayer, transferee, or other person is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence. Under such circumstances if no petition is filed with The Tax Court of the United States within 90 days after the mailing of the notice (or within 150 days after mailing in the case of such a notice mailed after October 21, 1942, and addressed to a person outside the States of the Union and the District of Columbia) to the taxpayer, transferee, or other person, the tax, or liability under section 311, will be assessed immediately upon the expiration of such 90-day or 150-day period, and demand for payment will be made by the collector. The term "fiduciary" is defined in section 3797(a)(6) to mean a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

* * *

APPENDIX B

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APPENDIX B

U. S. TREASURY DEPARTMENT

NAME OF INTERNAL REVENUE AGENT IN CHARGE

215 BOSTON BUILDING

P O BOX 2060

SALT LAKE CITY 10. U

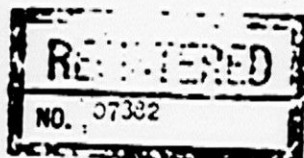
OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE TO AVOID
PAYMENT OF POSTAGE, \$300
(FBI)

Mrs. ~~Charles~~ (Fannie) Dolezilek

Replar

Montana



THE TAX COURT OF THE U. S.
DIV. DOCKET #207

SEP 21 1952

PETITIONER'S -
EXHIBIT
RESPONDENT'S



STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : Charles I. Fox, Internal Revenue Agent in Charge
 Attention: Conference (L. H. Jackson)

FROM : Collector of Internal Revenue - Helena, Montana

DATE

May 1, 1952

MAY 5 1952

OFFICE OF
INTERNAL REVENUE

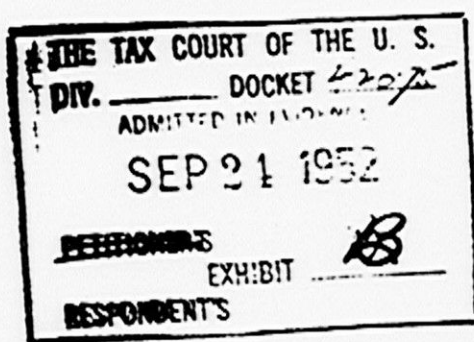
SUBJECT: Mrs. Charles (Fannie) Dolezilek, Poplar, Montana - Years 1947 to 1950, incl. - Issuance of Statutory Notice of Deficiency (30-day letter) dated 3/11/52.

Reference is made to your office memorandum dated April 17, 1952, with which you forwarded a statutory notice of deficiency letter, dated March 11, 1952, with the request that it be delivered in person to the taxpayer.

For your information, our deputy collector, C. E. Hagen, under date of April 25, 1952, advises as follows:

"Letter in question was delivered personally by this Deputy to the taxpayer at 11:15 AM today. Taxpayer was located through the help of the Manager of Land Services of Fort Peck Agency in Poplar, Mont. Contact with the postmaster, revealed that two notices were given by the Postal Dep't. that the letter was there for her, but was advised by Postmaster that she refused to accept it. Upon giving it to the tp, this Deputy stated that it was explanation of the investigation, and that the waiver attached should be signed if they or she agreed, if not, as explained in letter, her recourse was through a protest, to the tax Court. Tp accepted letter without any special comment. Other persons advised this Deputy that the tp and husband were very wealthy, and also very stubborn.

Yours truly,
 /s/ C. E. Hagen
 Deputy Collector"



TO: COLLECTOR, HELENA, MONTANA

4/17/52

FROM: CONFERENCE (L.H.JACKSON) (90-Day)

RE: Mrs. Charles (Fannie) Dalegilek, Poplar, Montana - Years: 1946 to 1950, incl. - Issuance of Statutory Notice of Deficiency (90-day letter) dated 3/11/52.

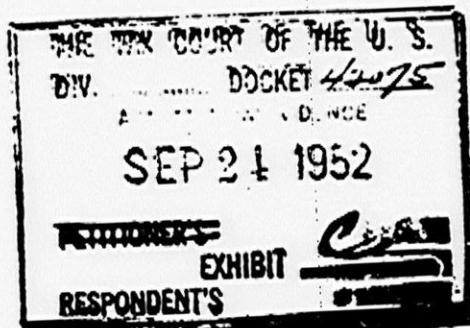
In accordance with the provisions of paragraph No. 318 of the Internal Revenue Agents' Manual, the enclosed statutory notice of deficiency letter dated March 11, 1952, addressed to the above-named person, is referred to you with the request that you assign a deputy collector to attempt to deliver such letter in person to the taxpayer.

The letter was mailed to the taxpayer by registered mail on March 11, 1952, and was just returned by the Post Office Department without delivery for the reasons "Unclaimed - Refused".

The taxpayer is an enrolled Fort Peck Indian and her affairs are apparently being looked after by Mr. John F. Bayak, Attorney, Poplar, Montana. If the taxpayer refuses to accept the letter from your deputy collector, please have the deputy return the letter with his comments as to why delivery was not effected. If delivery is effected, the deputy's advice in that regard would also be appreciated.

Internal Revenue Agent in Charge

LH:els
Enclosure



APPLICATION FOR REGISTRATION AND CERTIFICATE OF DECLARED VALUE OF MATTER SUBJECT TO POSTAL SURCHARGE

INTERNAL REVENUE AGENT IN CHARGE
SALT LAKE CITY, UTAH
(No collection of surcharge is required on international registered mail)

(Name of sender) _____ hereby applies for the registration of the articles described below and certifies that the amounts of the declared values set forth on the sheet are the full values of the articles listed or the known or estimated cost of duplication in the case of nonnegotiable securities.

NOTE.—Additional receipted copies of this bill will be furnished as certificates of mailing only, upon payment of one cent for each article listed on each additional copy of the bill. Claims for indemnity may not be paid unless articles are properly packed and endorsed, and unless claims are filed within the prescribed time limits. (See postmaster for detailed information.)

(1) NUMBER OF ARTICLE	(2) NAME OF ADDRESSEE, STREET, AND POST OFFICE ADDRESS	(3) Postage (exclusive of other charges or fees)	(4) Regis- try fee	(5) Fee paid for return receipt	(6) Delivery registra- tion—Fee paid	(7) Full value or cost of dupli- cation if nonnegotiable securities	(8) Surcharge on entire contents of article	(9) REMARKS?
07331	Charles J. Dolezilek, Poplar, Mont		30					
07332	Mrs. Charles J. Dolezilek, Poplar, Mont		30					
07333	Harry Insfeld, Remerton, Mt.		30					

When an article contains matter declared for full value and that for which the cost of duplication is declared, enter in column (7) the sum of the declarations for "full value" and "cost of duplication."

Show in "Remarks" column (9) class postage paid if other than first or if international mail. Use this column to indicate "F" if "Fragile"; "S.D." if "Special-Delivery"; "A.M." if "Air Mail"; and "C. O. D." and amount due sender if registered C. O. D. mail.

Total number of pieces listed by sender Three
(Write number here in words)

Total number of pieces received at post office 3

Postmaster, per [Signature]
(Name of receiving employee)

Also stamp here for additional copies of this bill



Postmark and date of receipt